INDEX

	Page
Opinion below	1
Question presented	2
Statute involved	2
Statement	3
Reasons for granting the writ	9
Conclusion	17

CITATIONS

Cases:	
Arkansas Wholesale Grocers' Assn. v. *Federal Trade Comm.*, 18 F. (2d) 866	12
Chamber of Commerce v. *Federal Trade Comm.*, 13 F. (2d) 673	12
Cudahy Packing Co. v. *Holland*, 315 U. S. 357	14
Federal Trade Comm. v. *Goodyear Co.*, 304 U. S. 257	11
Fleming v. *Cincinnati Union Terminal Co.*, 117 F. (2d) 1012	10
Fleming v. *Jacksonville Paper Co.*, 128 F. (2d) 395	9
Fleming v. *Sta-Rite Ginnie Lou Company*, 3 Wage Hour Rept. 174	6
Goshen Mfg. Co. v. *Myers Mfg. Co.*, 242 U. S. 202	14
Guarantee Veterinary Co. v. *Federal Trade Comm.*, 285 Fed. 853	12
Henderson v. *Burd*, 133 F. (2d) 515	14
Jacobs v. *Hand Knitcraft Institute*, 2 Labor Cas. (C. C. H.) 144	6
Jacobs v. *The Hump Hairpin Mfg Co.*, 3 Wage Hour Rept. 13	6
National Labor Relations Board v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295	12
National Labor Relations Board v. *Pennsylvania Greyhound Lines*, 303 U. S. 261	11
Otis & Co. v. *Securities and Exchange Comm.*, 106 F. (2d) 579	12
Perma-Maid Co. v. *Federal Trade Comm.*, 121 F. (2d) 282	12, 13
Sears, Roebuck & Co. v. *Federal Trade Comm.*, 258 Fed. 307	12, 14

	Page
Cases—Continued.	
Southern Pacific Terminal Co. v. *Interstate Commerce Comm.*, 219 U. S. 498	11
United States v. *San Francisco*, 310 U. S. 16	14
United States v. *Trans-Missouri Freight Assn.*, 166 U. S. 290	11
United States v. *Van Wagener-Sager, Inc.*, 34 F. Supp. 735	6
Walling v. *Shenandoah-Dives Mining Co.*, 6 Wage Hour Rept. 304	11
Statutes:	
Clayton Act	16
Fair Labor Standards Act of 1938, 52 Stat. 1060 (29 U. S. C. 201 *et seq.*):	
Sec. 6	4
Sec. 6 (a) (3)	4
Sec. 8	4
Sec. 11 (a)	2
Sec. 16 (a)	16
Sec. 16 (b)	16
Sec. 17	2, 13, 15
National Labor Relations Act (29 U. S. C. 160 (e))	13
Securities and Exchange Act (15 U. S. C. 78 (u))	13
Sherman Act	16
Social Security Act of August 14, 1935, 49 Stat. 635 (42 U. S. C. 901)	4
Miscellaneous:	
Interpretative Bulletin No. 1, par. 7, 1940 Wage Hour Man. 129	5
Regulations on Records to be Kept by Employers, October 22, 1938, 3 F. R. 2533	5
Amendment, 4 F. R. 968	6
Amendment, 4 F. R. 4046	6
Wage-Hour Reporter:	
"Advisory Opinions"	7
"Employers Questions Answered"	7
"Official Answer to Questions"	7
Wage order for the Embroideries Industry, promulgated by the Administrator, effective January 27, 1941	4

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 1019

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

T. BUETTNER AND COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the Administrator of the Wage and Hour Division, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit, entered February 11, 1943, reversing a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, and directing the dismissal of the complaint.

OPINION BELOW

The opinion of the District Court (R. 441–451) is reported in 5 Wage Hour Rept. 279 (1942).

The opinion of the Circuit Court of Appeals (R. 514–516) is reported in 133 F. (2d) 306.

QUESTION PRESENTED

Whether the discontinuance of violations under official pressure requires denial of injunctive relief against an employer under Section 17 of the Fair Labor Standards Act of 1938, where there is proof of substantial violations over a long period of time and the employer continues to assert the legality of such past practices.

STATUTE INVOLVED

The statute involved is the Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U. S. C. 201 *et seq.* The provisions directly pertinent are:

> SECTION 11 (a):
>
> * * * the Administrator shall bring all actions under section 17 to restrain violations of this Act.
>
> SECTION 17:
>
> The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., 1934 edition,

title 28, sec. 381), to restrain violations of section 15.

STATEMENT

Respondent, an Illinois corporation, with its principal office and factory in Chicago, has long been engaged in the wholesale distribution of patterns for various kinds of needlework and threads for use in completing the patterns (R. 24–25, 451–452). To facilitate the sale of these patterns, models with the embroidery completed are sold to retailers so that the appearance of the pattern when completed may be observed (R. 25–26, 452). Approximately 87 percent of these models are sold to retailers outside of the State of Illinois (R. 26, 452).

Approximately 200 home workers performed the embroidery work to complete the stamped patterns (R. 454). This work was performed under detailed instructions from respondent, which also supplied the thread for the work (R. 31, 47, 50, 58, 62, 63). Respondent, by time tests made with expert needleworkers at its plant (R. 291–294), calculated the compensation to be paid the home workers so that it would approximate ten cents per hour (R. 294–295, 399). The District Court found that, in fact, the majority of the home workers earned an average of ten cents an hour for their work (R. 453–454). The lowest hourly

rate permitted under the statute at any time during the period in suit was 25 cents per hour.[1]

Shortly before the effective date of the Fair Labor Standards Act respondent sought and obtained the advice of its attorneys that these home workers were "independent contractors" and not subject to the provisions of the Fair Labor Standards Act (R. 449). In 1936, shortly after the enactment of the Federal Social Security Act (Aug. 14, 1935, 49 Stat. 635, 42 U. S. C. 901), respondent adopted the practice of imprinting upon memoranda included with the bundles of materials sent to the home workers a stamped statement to the effect that the work was accepted by the home worker as an independent contractor and not as an employee, and that the respondent was not subject to the Federal or any State social security, unemployment insurance, old age pension, or workmen's compensation laws. At about the time the Fair Labor Standards Act

[1] The minimum rate prescribed by Section 6 of the Act between October 24, 1938, the effective date of the statute, and October 23, 1939, was 25 cents per hour. A minimum rate of 30 cents per hour is prescribed by the section for the period between October 24, 1939, and October 23, 1945, when it is to become 40 cents. Section 6 (a) (3) provides for the payment of a rate between 30 and 40 cents per hour prescribed in an order of the Administrator issued under Section 8 of the statute. A wage order for the Embroideries Industry was promulgated by the Administrator and became effective on January 27, 1941, thus increasing the rate applicable to the respondent's employees from 30 cents to 37½ cents per hour.

went into effect, this stamp was amended to include the Wage and Hour Law among those to which respondent stated it was not subject. Checks made out to the home workers contained the same stamp. In April, 1939, a "memorandum of agreement" was substituted for the previous memorandum, also reciting that the home worker was an independent contractor. The home workers were requested to sign this memorandum in order to obtain their compensation. (R. 455–456). During the period in which the home workers were designated independent contractors they continued to receive compensation at the rate of approximately ten cents per hour (R. 501–504).

On October 12, 1938, almost two weeks before the effective date of the Act, the Administrator, in a widely distributed interpretative bulletin, announced that "Since the Act contains no prescription as to the place where the employee must work, it is evident that employees otherwise coming within the terms of the Act are entitled to its benefits *whether they perform their work at home,* in the factory, or elsewhere." [Italics supplied.] Interpretative Bulletin No. 1, par. 7, 1940 Wage Hour Man. 129, 131. Another statement of the Administrator's position that the Act applied to such home workers was contained in the "Regulations on Records to be Kept by Employers,"

published as early as October 22, 1938, in the Federal Register (3 F. R. 2533).[2] Amendments to these Regulations, providing specific instructions for the keeping of wage and hour records for industrial home workers, were published in the February 18, 1939 and September 26, 1939 issues of the Federal Register (4 F. R. 968, 4046).

Long prior to the institution of the instant action, numerous civil actions and a number of criminal cases involving industrial home workers had been instituted, some of which are reported, and others of which were against employers in the vicinity of respondent's plant. See *Jacobs* v. *The Hump Hairpin Mfg. Co.*, located in Chicago, Illinois, 3 Wage Hour Rept. 13 (N. D. Ill.) (consent judgment entered December 29, 1939)); *Fleming* v. *Sta-Rite Ginnie Lou Company,* 3 Wage Hour Rept. 174, 180 (E. D. Ill.) (consent judgment entered April 30, 1940)); *Jacobs* v. *Hand Knitcraft Institute,* 2 Labor Cas. (C. C. H.) 144 (S. D. N. Y. 1939); *United States* v. *Van Wagenen-Sager, Inc.,* 34 F. Supp. 735 and 736 (N. D. N. Y.).[3]

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[2] The following provision was included in these regulations: "* * * the required records shall be made and preserved by the employer for 'industrial homeworkers' or other employees who produce goods for the employer from material furnished by him or who are compensated for such employment at piece rates, wherever such employees actually perform their work."

[3] Thus the statement of the court below that the Administrator had "taken no position by regulation or otherwise on this relationship (R. 515)" is accurate only in the very limited

The Wage and Hour Division commenced an inspection of the respondent's compensation practices on April 16, 1941, about two and one-half years after the effective date of the Act. On April 23, 1941, the respondent discontinued sending work to its home workers and thereafter caused the work formerly sent out to home workers to be performed by employees at its plant in Chicago (R. 393, 397, 456–457). Prior to that time, respondent had employed a few needleworkers (called "sample workers") at its plant to embroider the original models under the supervision of the designers (R. 306–307). About ten additional needleworkers were brought into the plant when home work was discontinued (R. 318), and the volume of production was apparently curtailed (R. 397–398). There is evidence indicating that home work was discontinued to await the outcome of this litigation. On October 20, 1941, the supervisor of respondent's display model department

sense that no explicit opinion was issued directly to defendant. It does not appear that defendant ever requested the Administrator for such an opinion. In view of the numerous widely publicized opinions issued by the Administrator in individual cases, upon request (see sections entitled "Advisory Opinions on Fair Labor Standards Act," "Employers Questions Answered," "Official Answers to Questions," and similar headings in practically every issue of the Wage-Hour Reporter, from October 31, 1938, to the present time), in addition to the more general and formal interpretative bulletins, defendant in all probability knew he could have secured an opinion as to his individual situation, had he cared to inquire.

wrote one of the home workers stating that "we are not yet sending out any work. I shall be more than happy when (and if) the time comes when I can write you to say we are again sending it out. In the meantime we will all just have to be patient, and hope for the best. * * * I hope to be able to have better news at some future date, but please do not count on it for some time to come." (R. 422.)

On July 14, 1941, the Administrator brought suit for an injunction (R. 2–8). Respondent defended on the grounds that the home workers were not its employees and that, in any event, it had ceased violating before the commencement of suit (R. 20–23). The district court concluded that the home workers were employees within the meaning of the Act and, therefore, subject to its provisions, and that cause had been shown for the issuance of an injunction (R. 441–451). The court rejected respondent's contention that no injunction should issue because it had acted in "good faith" in assuming, on the advice of its attorneys, that the home workers were independent contractors, and because it had discontinued the violations before the institution of this action. Stating that "the defendant was insisting that it was within its legal rights" and had violated the Act "with respect to a large number of persons," the court held that the circumstances warranted the issuance of an injunction (R. 451).

On appeal, the respondent continued its insistence that the home workers were independent contractors and therefore not subject to the Act, though also contending that no injunction should issue in any event since it had discontinued home work. The court below reversed the judgment of the district court and directed dismissal of the complaint. The circumstances regarded by the Circuit Court of Appeals as controlling were that respondent had acted "in good faith," upon advice of counsel that the workers were independent contractors; that after the Government investigators inspected respondent's records, the distribution of work to home workers was discontinued; and that respondent's officers testified that they had no intention of resuming this practice (R. 515). The court did not decide whether the home workers were employees under the Act, but held that the district court "was not authorized to grant an injunction" under the circumstances.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is in conflict with the decisions of two other Circuit Courts of Appeals. In *Fleming* v. *Jacksonville Paper Co.*, 128 F. (2d) 395, it was claimed that violations of the Act had ceased after the commencement of an inspection by the Administrator. Although the contention was made there, as in the instant case,

that this defeated the Administrator's right to an injunction, the Circuit Court of Appeals for the Fifth Circuit held (p. 399) that "it is clear there had been recent violations, and there was still contention and this was enough to ground the grant of injunction upon." The cessation of violations as "the result of recent official pressure" was, therefore, held an insufficient basis for denying an injunction to the Administrator. Despite the presence of both "recent violations" discontinued only under official pressure, and continued "contention" in the instant case, the court below held that this was not sufficient ground for an injunction.

The decision of the Circuit Court of Appeals for the Sixth Circuit in the case of *Fleming* v. *Cincinnati Union Terminal Co.*, 117 F. (2d) 1012, is also in conflict with the decision below. There the District Court had dismissed an action by the Administrator for injunctive relief on the ground that defendant had altered its plan of compensating its employees after the filing of suit. Although the Administrator did not challenge the legality of the new method of payment, the Court of Appeals reversed the dismissal, holding the denial by an employer that it had violated the Act, as charged by the Administrator, presented "justiciable issues which [the Administrator] has a right to have determined," notwithstanding discontinuance of the illegal practices. Compare,

contra, Walling v. *Shenandoah-Dives Mining Co.*, 6 Wage Hour Rept. 304 (C. C. A. 10).

2. The court below has decided an important Federal question in probable conflict with principles established in decisions of this Court and of other Circuit Courts of Appeals in cases arising under other statutes. This Court approved the enforcement of an order to cease and desist in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 271, and denied that its enforcement was improper "because it is obeyed or because changing circumstances indicated that the need for it may be less than when made." Likewise, it was this Court's conclusion in *Federal Trade Comm.* v. *Goodyear Co.*, 304 U. S. 257, 260, that compliance with the Commission's order pending recourse to the court did not deprive "the Commission of its right to have its order maintained if validly made" or remove the legal issues from the court's determination. This Court in *United States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290, 309–310, sustained the right of the Government "as a substantial trustee for the public under the act of Congress * * * to bring before the court and obtain its judgment" on the question of legality of trade practices, notwithstanding the abandonment of the challenged practices by the defendant. See also *Southern Pacific Terminal Co.* v. *Interstate Commerce Comm.*, 219 U. S. 498.

The same principles have been applied in decisions by numerous Circuit Courts of Appeals which have held that discontinuance of violations, combined with a statement of intention not to resume them, does not justify denial of judicial enforcement. *Otis & Co.* v. *Securities and Exchange Comm.*, 106 F. (2d) 579 (C. C. A. 6); *Perma-Maid Co.* v. *Federal Trade Comm.*, 121 F. (2d) 282 (C. C. A. 6); *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295 (C. C. A. 6); *Arkansas Wholesale Grocers' Assn.* v. *Federal Trade Comm.*, 18 F. (2d) 866 (C. C. A. 8); *Chamber of Commerce* v. *Federal Trade Comm.*, 13 F. (2d) 673 (C. C. A. 8); *Guarantee Veterinary Co.* v. *Federal Trade Comm.*, 285 Fed. 853 (C. C. A. 2); *Sears, Roebuck & Co.* v. *Federal Trade Comm.*, 258 Fed. 307 (C. C. A. 7). These decisions hold that the Government agency is not obliged to assume that such practices will not be resumed,[4] or to accept the assurances of one who continues to assert the legality of the challenged practices,[5] and that the Government official's duty is not discharged by abandoning

[4] *Arkansas Wholesale Grocers' Assn.* v. *Federal Trade Comm.*, 18 F. (2d) 866, 871 (C. C. A. 8); *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295 (C. C. A. 6).

[5] *Otis & Co.* v. *Securities & Exchange Comm.*, 106 F. (2d) 579, 584 (C. C. A. 6); *Sears, Roebuck & Co.* v. *Federal Trade Comm.*, 258 Fed. 307, 310 (C. C. A. 7).

the complaint on a showing that the unlawful practices have been discontinued.[6]

These cases involved a variety of statutes, some providing for resort to the court to enforce an administrative order and others providing for application to the court for injunctive relief without a prior administrative hearing or order. The language of Section 17 does not differ materially from the provisions in these statutes prescribing the enforcement powers of the courts. The comparable provision of the Securities and Exchange Act, for example, is that *"upon a proper showing* a permanent or temporary injunction or restraining order shall be granted." [Italics supplied.] (15 U. S. C. 78 (u).) Under the National Labor Relations Act the court "shall have power" to enter a decree enforcing, modifying or setting aside the order of the Board (29 U. S. C. 160 (e)). There is thus no occasion for construing the language "cause shown" in Section 17 of the Fair Labor Standards Act as meaning something different from a showing which would warrant judicial enforcement under these other acts. The purpose of providing for judicial enforcement is the same with respect to all of the statutes, that is, to insure adequate enforcement by providing the effective restraint

[6] *Perma-Maid Co.* v. *Federal Trade Comm.*, 121 F. (2d) 282, 284–285 (C. C. A. 6).

afforded by judicial sanction. The application of the remedy in Section 17 of the present Act does not "call for a balancing of equities or for the invocation of the generalities of judicial maxims." *United States* v. *San Francisco,* 310 U. S. 16, 30. "Where an injunction is authorized by statute it is enough if the statutory conditions are satisfied." *Henderson* v. *Burd,* 133 F. (2d 515, 517 (C. C. A. 2).[7]

3. The question involved is one of large importance in the administration of the Fair Labor Standards Act. Its significance is measured by the importance of the injunction to the effective enforcement of the Act. The Act is a statute of general and very wide application. "The problem of enforcement is intricate and exacting." *Cudahy Packing Co.* v. *Holland,* 315 U. S. 357, dissenting opinion of Mr. Justice Douglas at p. 368. In a task of such magnitude the additional assurance of compliance that is afforded by an injunction is of special value. Without an injunction there is no assurance that a violator "would not continue its former course," "if it could shake [the Administrator's] * * * hand from its shoulder." *Sears, Roebuck & Co.* v. *Federal Trade Comm.,* 258 Fed. 307, 310 (C. C. A. 7). The added measure of security afforded by judi-

[7] Even in ordinary equity suits between private parties, an injunction may be granted although violations have ceased prior to the institution of suit. *Goshen Mfg. Co.* v. *Myers Mfg. Co.,* 242 U. S. 202.

cial restraint is of particular importance because of the effect of violations upon competitive conditions. A violator can secure such immediate and substantial competitive advantage by noncompliance, even for only occasional short periods, that the promise of compliance by a past offender does not inspire confidence. Competitors, lacking confidence in such promises, may be impelled to seek the same advantages of noncompliance, with the consequent possibility of a general break-down of enforcement.

The Administrator believes that the injunctive remedy has been the most effective single measure in securing widespread compliance with the Act. If this remedy can be frustrated by mere discontinuance of illegal conduct when the violator is discovered, the civil enforcement remedy becomes virtually meaningless. One of the most important enforcement measures which has been made available by Section 17 is the consent decree, which assures comparatively inexpensive and expeditious compliance. The consent decrees, of course, greatly outnumber the injunctions issued in litigated cases, and they are responsible for a very substantial part of the successful enforcement of the Act. Such decrees will be unobtainable, of course, if the violator feels he need only give his promise not to resume violations.

Furthermore, the ruling of the court below that proof of substantial past violations is insufficient to warrant an injunction imposes an almost im-

possible burden on the Administrator. Responsible administrative action cannot be taken instantaneously upon the termination of an investigation. The impracticability of conducting a continuous investigation until the date suit is instituted or the trial is held precludes his securing such proof as the court below deemed essential. Proof of the likelihood of resumption of violations is equally difficult if evidence of substantial past violations over a long period of time and continued contention by the employer do not establish reason to anticipate future violations.

The injunctive remedy is the only civil enforcement remedy provided for the Administrator.[8] It is particularly appropriate for the deter-

[8] Section 16 (a) provides criminal penalties for *wilful* violations. Adequate determination of interpretative questions in criminal cases is not feasible (1) because of the more stringent requirements of proof, and (2) because such questions usually arise on the pleadings by way of a motion to quash or a demurrer. Many of the complicated interpretative questions that arise under the Fair Labor Standards Act cannot be properly decided merely upon pleadings. The difficulties inherent in attempting to obtain general compliance with this type of statute through criminal prosecution has been recognized by Congress in numerous instances. The Securities and Exchange Act, the Sherman Act, the Clayton Act, and others, make provision for civil restraining orders and injunctions as well as for criminal penalties.

Section 16 (b) of the Act, providing for employee suits, is likewise inadequate for interpretative purposes. Employees do not have the broad investigatory powers of the Administrator nor the general public interest or responsibility to make adequate presentation of the facts and considerations bearing on interpretative questions.

mination of disputed questions of statutory construction. As demonstrated in the instant case, no authoritative determination of controversial interpretative issues can be secured if the injunction is denied merely because the respondent has ceased violating under official pressure.

CONCLUSION

We respectfully submit that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

CHARLES FAHY,
Solicitor General.

IRVING J. LEVY,
Acting Solicitor,
United States Department of Labor.

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IN THE

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OCTOBER TERM, A. D. 1942

No. 1019

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION UNITED STATES DEPARTMENT OF LABOR,
Petitioner,

vs.

T. BUETTNER AND COMPANY, A CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION.

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INDEX

	PAGE
Opinion below	1
Questions presented	2
Statement	2-10
Objections to granting writ	10-18
Conclusion	18
Appendix	19-22

CITATIONS.

Cases:

Federal Trade Comm. v. Goodyear Company, 304 U. S. 257	14
Fleming v. Cincinnati Union Terminal Company, 117 F. (2d) 1012	11
Fleming v. Jacksonville Paper Company, 128 F. (2d) 295	11
Fleming v. National Bank of Commerce, 41 F. Supp. 833	10, 11
Fleming v. Phipps, 35 F. Supp. 627	10, 11
Goshen Mfg. Co. v. Myers Mfg. Company, 242 U. S. 202	16
J. C. MacFarland Co. v. O'Brien, 6 F. (2d) 1016	10
National Labor Relations Board v. Pennsylvania Greyhound Lines, 303 U. S. 261	13
Otis & Co. v. Securities and Exchange Commission, 106 F. (2d) 579	14
Securities and Exchange Commission v. Torr, 87 F. (2d) 446, 50	11
Securities and Exchange Commission v. Universal Service Assn., 106 F. (2d) 232	11
Southern Pacific Terminal Company v. Interstate Commerce Commission, 219 U. S. 498	15

PAGE

CITATIONS.

Cases (continued):

U. S. v. Freight Association, 166 U. S. 290 15

U. S. v. Monia, 87 L. Ed. 297 17

U. S. v. U. S. Steel Corporation, 251 U. S. 417, 445 11

Walling v. Shenandoah-Dives Mining Co., 134 F. (2d) 395 ..... 11, 12

Statutes:

Clayton Act (15 U.S.C. 21) 14

Fair Labor Standards Act of 1938, 52 Stat. 1060 (29 U.S.C. 201 et seq.) 10, 11, 16, 17

Section 16 ..... 10, 16

Section 17 ..... 10, 11, 16, 17

Federal Trade Commission Act (15 U.S.C. 45(b)) 14

National Labor Relations Act (29 U.S.C. 151 et seq.) 13

Securities and Exchange Act (15 U.S.C. 78 U.) 14

Wages and Hours Release No. 148, Nov. 16, 1938 8

Vol. 2 Commerce Clearing House 8

Text Book:

32 C. J. 29 13

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BRIEF OF RESPONDENT IN OPPOSITION.

Opinion Below.

The opinion of the Circuit Court of Appeals is reported in 133 F. (2nd) 306 (R. 514-516).

Jurisdiction.

The jurisdiction of this Court is invoked under Section 248 of the Judicial Code, as amended. 48 U. S. C. 347. The date of the judgment order in the District Court is April 15, 1942 (R. 460). On February 11, 1943, this judgment was reversed with instructions to dismiss the complaint. (See opinion of Circuit Court of Appeals, R. 514-516.) The mandate of the Circuit Court of Appeals was filed in the District Court on March 5, 1943. On March 29, 1943, after due notice to Petitioner, the District Court, pursuant to said mandate, vacated the judgment order of April 15, 1942, and dismissed this suit. (See Appendix attached to this brief, and certified copy of said order entered by District Court.) *This suit is no longer pending.*

Questions Presented.

Whether under the circumstances of this case, the Administrator is entitled to an injunction as a matter of right, when the proof is conclusive that the alleged violations terminated long before the institution of this suit and there is no likelihood of their resumption in the future.

Whether this court has jurisdiction to entertain the petition for a writ of certiorari.

STATEMENT.

In view of the inaccurate statement of the facts by Petitioner, Respondent considers it necessary to make the following statement.

It was stipulated by the parties that Respondent, prior to October 24, 1938, was engaged in the sale at wholesale of yarns, threads, crochet threads, stamped merchandise, needlepoint, picture frames for needlepoint, and various types of notions and fabrics, none of which were manufactured by Respondent (R. 24-27); that to show how the stamped merchandise would look upon completion, "display models" of each item of stamped merchandise having a different design were made up and sold to customers of the Respondent for advertising purposes. A sample "display model" was first made up at defendant's place of business. 7 to 12 similar "display models" for each sample were then produced by alleged "homeworkers" outside Respondent's place of business. The first seven of these models were used by traveling salesmen to demonstrate to the trade how similar unfinished stamped merchandise will look upon completion. The remaining sample "display models" were sold to Respondent's customers to advertise similar unfinished stamped goods sold by Respondent (R. 24-27).

In making up stamped merchandise, a design is laid out on a piece of paper by Respondent's chief designer (R. 383). Holes are then perforated at close intervals along the lines of the design. This perforated paper is then taken to Respondent's stamping department where this perforated paper is spread over a piece of cloth and a stencil of the design is made upon the cloth (R. 384). The stamped cloth is then returned to the chief designer who, with her assistant, an embroideress, selects threads or yarns having the right color and size for the design involved. The stamped material and selected threads are then given to an artist employed by Respondent at its place of business who commences work on an "original sample display model" under the supervision of the chief designer. If it is found that colors do not blend or fit properly, threads or yarns are removed and others substituted (R. 385). The time consumed by this embroideress is recorded on slips similar to Petitioner's Exhibit 18 (R. 501) which are called "estimate sheets" (R. 385). On this sheet is recorded (a) the luster, type, color and size of the threads used, (b) the name of the embroideress, and (c) the estimate cost and time of the embroidery work (R. 501).

Upon completion, the "original sample display model" together with 12 similar unfinished pieces of stamped cloth are turned over to the display model department where charts and specifications similar to Respondent's Exhibits 5 and 6 (R. 431-4) are made up. The chart is stamped with the design involved on the "display model" and specifications are set forth on this chart describing the nature of the work to be performed. The chart, specifications, stamped material and threads are then placed in a package and a "homeworker" is then selected who is available and capable of doing the particular work involved and the package is then forwarded to such "homeworker" by mail with contracts on forms similar to

Respondent's Exhibits 2 or 3 (R. 425-427, 325) which have been filled out to include the name and address of the "homeworker," the price Respondent is willing to pay for the work, the nature and type of work to be done, and the time when the same is to be completed. If the contract and work submitted is accepted by the "homeworker," the Respondent next receives the return of the completed work with the contract signed by the "homeworker" (R. 386-387).

The undisputed facts disclose that these "homeworkers" were women having long experience in their profession who were experts and highly skilled in their trade (R. 40, 53, 61, 83, 115, 131, 162, 178, 199, 221, 241). They were required to prove their skill and qualifications before work was offered to them (R. 35, 36, 46, 59, 71, 106, 120, 155). Unlike the average employee, these women did business with companies of their own choosing. They were mostly housewives whose household duties include cooking and care of their homes and families (R. 30, 46, 62, 69, 83, 99, 112, 120, 146, 156, 173, 199, 220, 231, 249, 355, 369). All of these women have been engaged in this type of work for 17 years or longer (R. 31, 69, 83, 106, 120, 155, 169, 221, 231, 263-4, 356, 368). Many of them worked for other companies before doing business with the Respondent (R. 29, 53, 70, 91, 146), and actually worked for other concerns at the same time they worked for Respondent (R. 70, 71, 91, 97, 100, 113, 127, 130, 204, 360). (See also Account Book of witness Anna Evans, Petitioner's Exhibit 15) (Tr. 504-511). The type of work involved required the skill of artists who had an intimate knowledge of many different kinds of intricate stitches (R. 177, 209, 272, 326). One person may do the work one way and another person another way (R. 210).

The "homeworkers" read the contracts sent them and knew what they contained (R. 48, 88, 112, 116, 123, 202,

219, 362). Each contract was signed by the "homeworker" and returned with the work (R. 23, 48, 54, 60, 64). Upon completion and return of the work in accordance with the contract, the "homeworker" was paid the contract price agreed upon (R. 37, 129, 160, 163). Payment was by check similar to Respondent's Exhibit 4 (R. 429), payable to the order of the "homeworker" and drawn by Respondent on its "contract account."

There were no requirements as to what days or weeks or numbers of hours during any day that a "homeworker" should work on any job or when she should start or stop the work sent to her. These matters were left to her discretion (R. 77, 78, 32, 55, 67, 97, 115, 128, 148, 160, 162, 186, 205, 245, 257, 267, 363). The work was usually done when the "homeworker" was not busy with her household or other activities (R. 32, 67, 83). The work was not performed on an hourly basis and payment was not made by the hour but according to the price agreed upon (R. 37, 57, 74, 117, 135, 162, 207, 229, 247, 257). The "homeworkers" testified that they considered this work to be "pick up work," something they might pick up and set down when they were not busy with other things (R. 55, 72, 115, 121, 129, 138, 146, 160, 357). It was spare time work on which they did not work steadily (R. 116, 121) as they would have been required to do if they had been employees of Respondent. No record of hours or time spent was kept by the "homeworkers" (R. 35, 39, 57, 74, 94, 117, 134, 142, 151, 158, 267, 358). In order to receive her compensation, a "homeworker" must live up to her contract obligations.

The Respondent did not control or direct (1) the place where, or (2) the conditions under which the work was done. There was no requirement that the work should be done in any particular place. It could be done wherever the "homeworker" desired (R. 32, 39, 40, 55, 62, 72,

75, 83, 96, 107, 115, 128, 143, 148, 161, 162, 186, 187, 203, 227, 258, 268, 363). In many cases "homeworkers" took their work with them on visits away from their homes (R. 32, 55, 115, 143, 148, 161). All "homeworkers" furnished their own places to work (R. 42, 56, 76, 116). None of the "homeworkers" living outside the City of Chicago had ever been to Respondent's place of business in that city, nor have representatives of the Respondent ever gone to the homes of "homeworkers" (R. 256-7, 42, 52, 53, 70, 75, 94, 111, 126, 159, 203).

No control was exercised over the persons who did the work. Many "homeworkers" contracted for work under fictitious names as well as in the names of their mothers, sisters and other persons (R. 53, 58, 78, 79, 125, 132-3, 149, 153, 155, 162, 357, 363-4). They also helped their friends and others with their work (R. 39, 52, 91, 96, 97, 99, 129, 146, 162, 361, 376). In many cases other people helped them complete their contracts (R. 57, 59, 72, 96, 129, 146-7, 189, 268, 357, 363-4, 377).

There was no requirement that the "homeworkers" should work exclusively for Respondent. While working for Respondent, or between jobs, they had the right, if they so desired, to work for other concerns than Respondent even on competitive or similar work (R. 42, 56, 73, 91, 116, 129, 189, 204, 360). Many "homeworkers" while engaged in work for Respondent contracted for work from other companies, many of whom were competitors (R. 70-71, 91, 100, 113, 127, 130, 204, 280-1, 360).

There was no requirement that any "homeworker" should do additional or other kind of work for Respondent than that contracted for (R. 130). Each job was a separate piece of business and stood on its merits (R. 73, 117, 131-5, 161, 205, 228, 258, 269, 285, 378). If a "homeworker" did not wish to accept work sent to her, she could return it (R. 38, 57, 73, 95, 114, 130, 149, 184,

204-5, 226, 242-3, 257, 266, 283, 332, 361). If the price stated in the contract was unsatisfactory, she could refuse to accept the work (R. 38, 95, 114, 148-9, 226, 243, 257, 266, 283, 362). In many instances work was not accepted and was returned because it was "too tedious" (R. 38), "too difficult" (R. 184), "ill health" (R. 204-5), "out of the city and unable to do the work" (R. 226-7), "did not like the price" (R. 257), "did not like the type of work" (R. 130). Each "homeworker" furnished her own tools, which usually consisted of needles, embroidery hoops, scissors, and crochet hooks (R. 40, 56, 76, 99, 108, 129, 163, 228, 333). Although "homeworkers" were required to complete each job in accordance with the contract and specifications (R. 63, 71, 160, 195, 267) it was understood that if the work was not so completed, Respondent did not have to accept it (R. 55, 56, 71, 84, 95, 114, 115, 129, 131, 160, 161, 184, 204, 224, 228, 257, 266). If the work was not completed within the time specified in the contract, it was understood Respondent reserved the right to reject it (R. 56, 71, 72, 114, 148, 161, 204, 266). During the course of the work, Respondent had no right to compel the "homeworker" to discontinue the work and to discharge the "homeworker," or to substitute other work for that which she was doing (R. 390). The right remained, however, with both the "homeworker" and the Respondent to discontinue such work upon completion of any job or to contract for additional work at such price as might be satisfactory to both. The fact that a "homeworker" completed one piece of work for Respondent did not obligate her to accept other work (R. 38, 55, 73, 78, 117, 131, 149, 187, 205, 227, 258). The fact that a "homeworker" did one piece of work for Respondent did not create any obligation on the part of the Respondent to send other work (R. 38, 56, 73, 78, 117, 149, 161, 187, 205, 227, 258).

Respondent had contracted with "homeworkers" for many years prior to October 24, 1938 (the effective date of the Fair Labor Standards Act) (R. 288, 306). Prior to that date Respondent consulted with its attorneys to ascertain whether or not it was within the provisions of the Act in its relationship with the so-called "homeworkers." It was advised that these individuals were "independent contractors" and not its "employees" and, hence, were not included within the coverage of the Act (R. 393). On the basis of this advice, Respondent continued its use of "homeworkers" in connection with work on "display models." At that time, and in fact up to the commencement of this suit, the Administrator had taken no position on this question by regulation or otherwise except to state that common law tests should be employed to determine whether an individual was an independent contractor or an employee (Wage and Hours Release No. 148, November 16, 1938, Vol. 2 Commerce Clearing House Labor Service, Section 23,626.188).

On April 16, 1941, Petitioner sent investigators to Respondent's place of business to investigate its records in order to ascertain whether or not Respondent was complying with the Act. The Respondent cooperated fully with these investigators and made all of its records available. After inspection and investigation Petitioner advised Respondent for the first time on April 16, 1941 that the Administrator considered these "homeworkers" to be its "employees" and subject to the Act (R. 312, 392). As a consequence of this action, the Respondent in *good faith* and *voluntarily* completely discontinued the use of "homeworkers" and has never resumed their use, and since that date all work formerly done by "homeworkers" has been performed by employees of the Respondent at its place of business in Chicago (R. 312, 391-2) and the Respondent has complied with the Act in every respect as to these employees and has paid them

37½¢ per hour, the scale prescribed by the Administrator for that kind of work, and has also kept records as required by regulations of the Administrator (R. 312-313, 393). This suit for an injunction was instituted on July 14, 1941, 81 days *after* Respondent's alleged violations had terminated. There is no evidence and *no finding by the trial court* that the Respondent was violating the Act at the time suit was brought, or that it then intended to violate the Act or was threatening to violate the Act in the future. Officers of the Respondent company testified, and their testimony is undisputed, that the Respondent has no intention of resuming its old practice of employing "homeworkers" in the future (R. 393, 313). The complaint alleges in paragraph 6 that Respondent, since the effective date of the Act, "and continuously to the date hereof" violated and "is violating" the provisions of the Act mentioned therein (R. 6). These allegations are not sustained by proof, but, in fact, all of the evidence is to the contrary. The complaint contains no averment that the Respondent threatens and intends to continue to violate the Act in the future unless enjoined.

Petitioner unfairly and without justification assumes throughout his petition that these "homeworkers" were "employees" of Respondent within the language of the Act and that Respondent was violating the Act. The Circuit Court of Appeals did not decide this question, but did say that "whether Respondent was within the purview of the Act was not free from doubt" (R. 516).

The good faith of the Respondent is established by the opinions and findings of the trial judge and that of the Circuit Court of Appeals. The trial court said:

> "In the case at bar the defendant unquestionably thought that it was within its legal rights. When the Fair Labor Standards Act became effective it sought advice of counsel, highly competent counsel. In good faith it thought that it was not an employer and that

these 'homeworkers' were not employees. It is true that in coming to that conclusion it assigned to the word 'employee' and the word 'employ' the limited meaning which has generally been assigned to these words—the limited meaning of master and servant, but the court is thoroughly convinced that they acted in good faith'' (R. 449).

OBJECTIONS TO GRANTING WRIT.

I.

The Circuit Court of Appeals did not err in reversing the judgment of the trial court.

The purpose of an injunction is not to afford a remedy for what is past, but is to prevent future mischief. It is not used for the purpose of punishment or to compel a defendant to do right, but to prevent or deter such defendant from doing wrong in the future. *J. C. MacFarland Co.* v. *O'Brien,* 6 F. (2d) 1016 (D.C. Ohio 1925), *Fleming* v. *Phipps,* 35 F. Supp. 627 (D.C. Md. 1940), *Fleming* v. *National Bank of Commerce,* 41 F. Supp. 833 (D.C. W.Va. 41).

Section 16 of the Act provides an adequate scope of punishment by ordinary criminal procedure for past violations. Section 17 of the Act looks to the future and provides for injunctions to prevent further violations. It is a rule of equity that an injunction will not issue where the wrong complained of has fully and definitely terminated before the institution of suit and where there is no evidence that the offense is likely to be repeated in the future. Courts of equity are not to be used to punish past offenses, but only to prevent future wrongdoing and they will not do a useless thing. *U. S.* v. *U. S. Steel Corp.,*

251 U.S. 417, 445, 64 L. Ed. 343, 40 S. Ct. 293, *Securities and Exchange Commission* v. *Torr,* 87 F. (2d) 446, 50, (C.C.A. 2nd 1937), *Securities and Exchange Commission* v. *Universal Service Assn.,* 106 F. (2d) 232 (C.C.A. 7th, certiorari denied 308 U.S. 622), 84 L. Ed. 519, 60 S. Ct. 378, *Walling* v. *Shenandoah-Dives Mining Co.,* 134 F. (2nd) 395 (C.C.A. 10th), *Fleming* v. *Phipps,* 35 F. Supp. 627 (D.C. Md. 1940), *Fleming* v. *National Bank of Commerce,* 41 F. Supp. 833 (D.C. W.Va. 1941).

The statutory requirement of Section 17 of the Fair Labor Standards Act that an injunction should be issued only "FOR CAUSE SHOWN" indicates that the usual statutory rules applicable to injunctions are to be followed with the exception that it is not necessary for the complainant to show an irreparable injury. This language casts the burden upon the parties seeking an injunction to establish *cause* for its issuance. This was not done in the instant case.

II.

The decision in this case is not in conflict with decisions of other Circuit Courts of Appeals.

Petitioner contends that the decision in this case conflicts with those of *Fleming* v. *Jacksonville Paper Company,* 128 F. (2d) (5th C.C.A.) 295, and *Fleming* v. *Cincinnati Union Terminal Company,* 117 F. (2d) (6th C.C.A.) 1012. No conflict exists for both of these cases are readily distinguishable upon their facts.

In the *Jacksonville* Case, the court said at page 339:

> "Section 17 of the Act gives jurisdiction to grant, but does not require in every case a grant of an injunction. The issuance of an injunction is within the discretion of the court."

In that case (a) there was no proof that the defendant did not intend to violate the Act in the future, (b) the cessation from the alleged violations was not voluntary as in the case at bar but was the direct result of official pressure, and (c) it was not clear from the evidence whether the alleged violations by the defendant were continuing up to the time of the filing of the suit. "Cause" was shown of the possibility of violations in the future.

The facts in the *Cincinnati Union Terminal* Case are also entirely different. The defendant in that case did not discontinue the alleged violations until subsequent to the institution of suit, and consequently the cessation was involuntary. Moreover, defendant did not introduce any evidence that it did not intend to violate the Act in the future. It is apparent, from the memorandum opinion, that "cause" was shown of the danger of future violations.

In *Walling* v. *Shenandoah-Dives Mining Co.*, 134 Fed. (2d) (C.C.A. 10th) 395, the facts indicated that approximately six months after the institution of action by the Administrator but before trial the alleged violations were discontinued and that thereafter the defendant was in full compliance with the Act. The court, in holding that an injunction should not issue, said at page 397:

> "But if during the proceedings violations cease and the accused admittedly is in full compliance, without reason to believe that future violations will occur, the justiciable controversy disappears and the question becomes moot. It would seem to be an idle gesture to enjoin violations of the Act when they have ceased and there is no reason to fear they will again be renewed."

Obviously each case must necessarily stand upon its own circumstances and whether there has been "cause shown" for the issuance of an injunction must necessarily

depend upon the facts of each case, 32 C. J. 29. Therefore, unless the facts presented are similar, there can be no conflict in the decisions. It is submitted that the cases above referred to are not in conflict with the decision in the case at bar.

III.

The decision in this case is not in conflict with decisions of this court and of other Circuit Courts of Appeals in cases arising under other statutes.

Petitioner asserts that this question is an important federal question and is in conflict with principles established by decisions of other cases in both this court and other Circuit Courts of Appeals arising under other statutes. All of the cases cited by Petitioner in support of this statement were decided under statutes containing vitally different provisions concerning the power to issue injunctions. These cases are also easily distinguishable on their facts.

In the case of *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261, as in all other cases involving the National Labor Relations Act (29 U. S. C. 160), the power of the Administrator to issue a cease and desist order is not for "cause shown," but is based upon a showing that a person *has engaged in* or is engaging in any such unfair labor practice.

Section 10(c) of the National Labor Relations Act specifically states:

> "If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint *has engaged in* or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, * * *" (emphasis ours.)

Power is expressly granted to enjoin for past violations. No similar grant of power is given to the Administrator under the Fair Labor Standards Act.

All of the Federal Trade Cases cited by petitioner such as *Federal Trade Commission* v. *Goodyear Company*, 304 U. S. 257, involve either (a) the Clayton Act (15 U.S.C. 21) which grants the power to the Commission to issue cease and desist orders "whenever the Commission or board vested with jurisdiction thereof has reason to believe that any person is violating or *has violated* any of the provisions of the Act, * * *" (emphasis ours) or (b) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45(b)) which provides:

> "Whenever the Commission shall have reason to believe that any such person, partnership, * * * *has been* or is using any unfair method of competition in commerce, * * * it shall issue and serve upon such person, partnership, or corporation a complaint. * * *" (emphasis ours.)

In each of the cases cited the Acts involved specifically granted power to issue cease and desist orders for past violations. The cases obviously are not similar.

Petitioner has also cited the case of *Otis & Co.* v. *Securities and Exchange Commission*, 106 F. (2d) 579 (C.C.A. 6th) and asserts that no distinction exists between the Securities Exchange Act and the Fair Labor Standards Act in respect to the power to issue injunctions. This decision relies on Section 78U(a) (15 U.S.C. 78U(a)) of the Securities and Exchange Act as the basis for the authority of the Commission to proceed in making its investigation and holding its administrative hearings. This section provides:

> "The Commission may, in its discretion, make such investigation as it deems necessary to determine whether any person *has violated* or is about to vio-

late any provision of this chapter or any rule or regulation thereunder, * * *" (emphasis ours).

The above case is also distinguishable in that the court specifically found at page 584 that the dealer might in the future resume his practice of selling securities in violation of the Act, and issued an injunction for that reason.

In *U. S.* v. *Freight Association,* 166 U. S. 290, an injunction was sought by the government to enjoin the operations of the defendant under an agreement alleged to be in violation of an Act of Congress to protect commerce against unlawful restraints and monopolies. The defendant was an association of railroads, which association was dissolved during the pendency of the suit. This court stated in its opinion at page 308 that the defendants did not allege their purpose not to enter into a similar agreement in the immediate future. In the instant case the Circuit Court of Appeals in its opinion pointed out that there was no finding by the trial court that the defendant intended to violate or was threatening to violate the act in the future (R. 515), and that the court could not have so found for all the evidence was to the contrary.

In *Southern Pacific Terminal Company* v. *Interstate Commerce Commission,* 219 U. S. 498 the Commission contended that inasmuch as its temporary "cease and desist order" was operative for only two years from the date of its issuance, the question of the authority for such order had become moot. The order expired November 15, 1910, and the case was argued before the Supreme Court on December 9, 1910. The only effect of that decision was a holding that the rights of litigants were to be adjudicated at the time of the beginning of the litigation. There, also, was a finding that the Commission had not asserted any intention to refrain from issuing a similar order in the near future.

Petitioner has made the broad statement (petition page 14, footnote 7) that the case of *Goshen Mfg. Co.* v. *Myers Mfg. Company*, 242 U. S. 202, is at variance with the decision of the Circuit Court of Appeals in the instant case so far as general equity principles are concerned. There this court noted that the defendant had retained the means of further infringement of the plaintiff's patent, and stated: "we have assumed that there was infringing done and *threatened*, * * *" (emphasis ours).

Each of the last three cases is distinguishable upon its facts.

IV.

Under the facts, the decision of the court below is not of such importance as to burden the administration of the Fair Labor Standards Act.

Since each case must stand upon its own facts in so far as the issuance of an injunction is concerned, the question involved is not of such great importance in the administration of the Fair Labor Standards Act. Only that class of cases will be affected where, from the facts, there is no likelihood of a resumption of the alleged violations in the future. As has been previously shown, the Act supplies the Administrator with two means of enforcement (a) criminal remedy (Sec. 16) and (b) civil remedy (Sec. 17). If injunctions should issue as a matter of right, regardless of the discontinuance of alleged violations and where there is no likelihood of their repetition in the future, then the harassment, stigma and expense of litigation placed upon commerce would be in direct contravention to the purposes of the Act. Such a rule would convert the civil remedy of injunction given under Section 17 into a criminal remedy which would be used to penalize an alleged violator for past alleged violations although there was no likelihood

of repetition in the future. Since it is possible that anyone may at some time violate the Act, Petitioner's argument would justify the issuance of an injunction against everyone so that the Administrator would not be concerned with future violations. The absurdity of this argument is apparent.

Petitioner's argument assumes that the court below held that the mere cessation of violations obviated the necessity of an injunction. As Respondent has endeavored to show, the rule contended for is applicable only where there is no likelihood of resumption of alleged violations in the future. When this circumstance exists, the purpose of an injunction has been fulfilled.

Since, under Section 17 of the Act, injunctions may issue only for "cause shown" it is necessary that in each case cause be shown by the Administrator and that the general equity principles relative to injunctions be applicable. The position taken by the Petitioner completely overlooks this requirement of the Act, and it is submitted that if it is desirable as a matter of public policy, that injunctions should issue as a matter of right, then this question should be the subject-matter of legislative relief rather than judicial interpretation. As was stated by this Court in an opinion decided within this term, "It is not for us to add to the legislation what Congress pretermitted." *U. S.* v. *Monia,* 87 L. Ed. 297.

The Administrator's regular periodic inspection of an employer's records serves as an ample check to keep the Administrator advised concerning compliance with the Act. This inspection is made anyway. Therefore no added burden is cast upon the Administrator.

In the instant case Respondent in good faith not only voluntarily terminated its alleged violations a long time prior to the institution of suit and disavowed any intention

of the resumption of the same, but the evidence introduced upon the trial conclusively established that it had changed its methods of doing business and was embroidering its "display models" at its place of business in Chicago, Illinois in full compliance with the Act. This action is conclusive as to the honesty of its purpose not to use "homeworkers" again.

V.

This court is without jurisdiction to hear this petition.

On February 11, 1943, the judgment of the District Court was reversed with instructions to dismiss the complaint (Opinion of the Circuit Court of Appeals, R. 514-516). The mandate of the Circuit Court of Appeals was filed in the District Court on the 5th day of March, 1943. On March 29, 1943, upon due notice to Petitioner, the District Court, pursuant to said mandate, vacated the judgment order on April 15, 1943, and dismissed this suit. (See appendix attached to brief and certified copy of order of District Court filed in this Court.) *This suit is no longer pending,* and this Court is without jurisdiction to entertain this petition.

CONCLUSION.

It is respectfully submitted that the cause warrants no review by this Court, and, therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

WALTER BACHRACH,
Counsel for Respondent.

HERBERT H. KENNEDY,
ROBERT C. KELSO,
Of Counsel.

APPENDIX.

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

L. METCALFE WALLING, Administrator of the WAGE AND HOUR DIVISION UNITED STATES DEPARTMENT OF LABOR, *Plaintiff*, *vs.* T. BUETTNER AND COMPANY, a corporation, *Defendant.*	Civil Action File No. 3217

NOTICE

To: Frank J. Delaney,
Regional Attorney
Wage and Hour Division, U. S. Department of Labor
Room 1200—222 West North Bank Drive,
Chicago, Illinois

PLEASE TAKE NOTICE that on Monday, March 29, 1943, at the hour of the opening of court in the forenoon, we shall appear before His Honor, Judge Barnes, in the United States District Court for the Northern District of Illinois, or before such other judge as may be sitting in his place and stead, and then and there move the court for the entry of an order in accordance with our motion, a copy of which is served upon you herewith.

MOSES, KENNEDY, STEIN & BACHRACH,
Attorneys for Defendant.

Received a copy of the foregoing Notice and Motion this 26th day of March, 1943.

Frank J. Delany
by S.B.P.

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

L. METCALFE WALLING, Administrator of the WAGE AND HOUR DIVISION UNITED STATES DEPARTMENT OF LABOR, *Plaintiff*, *vs.* T. BUETTNER AND COMPANY, a corporation, *Defendant.*	Civil Action File No. 3217

MOTION

Now comes T. BUETTNER AND COMPANY, a corporation, defendant in the above entitled cause, and moves this court for the entry of an order herein that the judgment of this court entered on the 15th day of April, 1942, be vacated and set aside and that the above entitled suit be dismissed in accordance with the mandate of the United States Circuit Court of Appeals for the Seventh Circuit, dated the 4th day of March, 1943, decreeing that such judgment be reversed and the complaint dismissed.

MOSES, KENNEDY, STEIN & BACHRACH,
Attorneys for Defendant.

DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

L. METCALFE WALLING, Administrator of the WAGE AND HOUR DIVISION UNITED STATES DEPARTMENT OF LABOR,
Plaintiff,
vs.
T. BUETTNER AND COMPANY, a corporation,
Defendant.

Civil Action File No. 3217

ORDER

The defendant having appealed to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment entered in this cause on the 15th day of April, 1942, and said Court having issued its mandate dated March 4, 1943, wherein it was ordered, adjudged and decreed that such judgment be reversed and said complaint be dismissed.

Now upon the mandate of the United States Circuit Court of Appeals for the Seventh Circuit dated the 4th day of March, 1943.

IT IS ORDERED, ADJUDGED AND DECREED that the judgment of this Court entered on the 15th day of April, 1942, be and the same is hereby vacated and set aside and that said suit is hereby dismissed.

Enter:

BARNES,
Judge of the District Court.

Dated: March 29, 1943.

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF ILLINOIS } ss:

I, ROY H. JOHNSON, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing are true and full copies of the original Notice and Motion of Defendant filed March 29, 1943, and Order entered March 29, 1943, dismissing suit, In the Case of L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff vs. T. Buettner and Company, a corporation, Defendant, Civil Action No. 3217, now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 28th day of May, A. D. 1943.

ROY H. JOHNSON,
Clerk.

(Seal)

By MARGUERITE GILMAN,
Deputy Clerk.